



ZONING BOARD OF APPEALS

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Ed Toole (Chair), Lisa Botticelli (Vice chair), Susan McCarthy (Clerk), Michael J. O'Mara, Kerim Koseatac, Mark Poor,
Michael Angelastro, Geoff Thayer

~~ MINUTES ~~

Thursday, October 8, 2015

Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

Called to order at 1:07 p.m.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; Marcus Silverstein, Zoning Enforcement Officer; Steve Butler, Building Commissioner; Terry Norton, Town Minutes Taker

Attending Members: Toole, Botticelli, McCarthy, O'Mara, Koseatac, Poor, Angelastro

Absent: Thayer

Late Arrivals: None

Early Departures: Angelastro, 5:30 p.m.;

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. August 13, 2015: **Motion to Approve.** (made by: O'Mara) (Seconded by: Koseatac) Carried unanimously
2. September 10, 2015: **Motion to Approve.** (made by: O'Mara) (Seconded by: Koseatac) Carried unanimously

II. OLD BUSINESS

1. 20-15 Shimmo Hills, LLC 10 North Road Cohen

WITHDRAWN WITHOUT PREJUDICE

Sitting Toole, Botticelli, McCarthy, O'Mara, Koseatac
Documentation None
Representing Steven Cohen, Cohen & Cohen Law PC
Public None
Discussion None
Motion **Motion to Accept the withdrawal without prejudice.** (made by: Botticelli) (seconded by: O'Mara)
Vote Carried unanimously

III. NEW BUSINESS

1. 67-14 Trade Wind Cottages Condominiums 40 & 42 Nobadeer Farm Road Beaudette

WITHDRAWN WITHOUT PREJUDICE

Sitting Toole, Botticelli, McCarthy, O'Mara, Koseatac
Documentation None
Representing Rick Beaudette, Vaughan, Dale, Hunter and Beaudette, P.C.
Public None
Concerns None
Motion **Motion to Accept the withdrawal without prejudice.** (made by: Botticelli) (seconded by: Koseatac)
Vote Carried unanimously

2. 36-15 Steven M. Alfieri, Trustee of Treerock Realty Trust, as Appellant, and 9 North Road LLC, as Owner

9 North Road Cohen

Appellants bring an appeal of decisions of the Building Inspector and Zoning Enforcement Officer (“ZEO”) to issue a building permit for work on 9 North Road, pursuant to Zoning By-law Section 139-29.E(1). Specifically, appellant seeks findings that Building Permit No. 884-15 contains zoning violations and is based on inaccurate and conflicting information, that the Building Inspector and ZEO failed to respond to written complaints within the required 14 days, pursuant to M.G.L., c. 40A Section 7, and that the refusal to suspend or withdraw the subject building permit allowed construction in violation of Section 139-17 (Height). The subject Locus is situated at 9 North Road, is shown on Nantucket Tax Assessor’s Map 43 as Parcel 1311, and as Lot 133 upon Land Court Plan 11461-8. Evidence of owner’s title is registered on Certificate of Title No. 25279 at the Nantucket County District of the Land Court. The property is zoned Limited Use General - 1 (LUG-1).

Sitting McCarthy (acting chair), Koseatac, Poor, Angelastro

Documentation File with associated plans, photos and required documentation

Representing **Steven Cohen**, Cohen & Cohen Law PC, for appellant Mr. Alfieri and abutter Ladybird LLC at 8 Middle Valley Road – This property has topography issues; reviewed grade-changes issues as related to the construction of the building resulting in the height exceeding zoning allowance by 3.5 feet. Asking for a revocation of the building permit. The owner should have a valid permit that meets zoning compliance. Contends the building department did not respond within the 14 days required in the bylaws.

Owner Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP for 9 North Road LLC

Representatives Jay Hanley, Hanley Construction and Development

Public Lisa Botticelli, for an unnamed neighbor

Concerns (1:09) **Poor** – Asked if Historic District Commission (HDC) had requested a grade stake.

Cohen – No. The HDC application for the house indicated nothing more than a 1-foot grade change; the additional grade change was included as part of the hardscaping plan. His client has appealed the hardscaping permit. The Board of Health (BOH) has revoked the septic permit.

Angelastro – Stated there is something from Site Design that states it is in compliance.

Cohen – Site Design Engineering is the owner’s engineer, Dan Mulloy; those numbers show how it is going to be fixed under the proposed plan.

Butler – This is not an appeal from inaction on his department’s side; he issued a stop work order and feels this appeal is moot. Construction work is continuing because they have applied for an appeal and can legally build during the appeal process. States his office did due diligence to ascertain the problem.

Silverstein – Mr. Butler is correct; the appeal was for failure to take enforcement action within 14 days under Massachusetts General Law (MGL). Stated the 14 days is not a hard and fast date. Read the appeal in regards to the 14-day response time for request of enforcement. Read a statement explaining why the building and zoning departments did not issue the stop work order within 14-days and that the time frame is directory, not mandatory. Stated this appeal was filed prematurely and therefore should be denied.

Reade – Agrees with the procedures as stated by Messrs Butler and Silverstein. Ultimately action was taken as requested by the appellant’s representative. This comes down to the interpretation of height as stated in the zoning bylaws. His client’s hope is to make adjustments to the building so that it will be in compliance to zoning bylaws. The appeal is without merit and does not stand as it is too late for an appeal and enforcement action has been taken. The only issue before this board is the zoning, which until the project is complete there is no height violation; this is an active construction site.

Botticelli – The site has been backfilled from elevation 10 up to elevation 19 and they are continuing to build in the hopes they get HDC approval for that change. Since they have gone so far, there is concern no one will make them start over. There should be 1 foot of fill as approved by the HDC. The average fill is 7 feet.

Silverstein – The bylaw does not prohibit grade changes to property. If this fill had been done prior to the filing of a permit, it would have been cited as the grade.

Botticelli – States she agrees with filling grade prior to construction; however, contends that is not the intent of the bylaw.

Silverstein – The fact they have been aware of this issue, they know they are proceeding at their own risk. With all that notice, it would be a stretch for the board to grant that variance. The only issue here is whether or not his office and the Building Department are held to the 14-day standard.

Cohen – Stated he filed the appeal because so much time passed without any action being taken. This is about a building permit which on the face has incorrect and invalid information. It is based upon that he is asking for the revocation of the permit regardless of the building on the ground.

McCarthy – Asked Mr. Butler about the building permit.

Butler – His department issued a stop work order, which he deemed appropriate at that time; he still feels it is the appropriate action to have taken. Agrees there is a lack of clarity on the original permit, which he investigated and decided could be rectified in the long term. He issued a Cease and Desist under Zoning, which is appealable.

Angelastro – Clarified with Mr. Butler his stance about the applicant’s continued construction.

Butler – The property owner is legally entitled under the appeal to continue at their own risk. The same is true under the Building Code, to continue work during an appeal.

Angelastro – If this board revokes the permit, the property owner can file an appeal and keep going.

Butler – Yes.

Reade – For the appellant to request a revocation of the building permit is tantamount to an appeal of the issuance of the building permit, which by law has 30 days. Mr. Butler has the power to revoke the building permit and the owner has the right to appeal that decision and keep on going. Procedurally, the appeal of the non-revocation of the building permit is the same as the appeal of the issuance of the building permit. That has to be done within 30 days.

Koseatac – Wonders what sort of message this board would send by allowing the inaccurate building permit to go forward and what other options there would be.

McCarthy – Agrees. She believes that revoking the permit is the way to go as the information was incorrect.

Antonietti – Read the appropriate excerpt from the Zoning Bylaws.

McCarthy – To her it seems wrong to fill in the grade up to elevation 19 beforehand then apply for a building permit, and not the intent of how things should be done. She feels doing that was a disregard for the process and the permit should be turned down.

Hanley – Stated there had been no flagrant disregard of the law. They have a permit and HDC approval and have a solution that is going before the HDC at this time. Stated that he believes they are legally entitled to go forward. A lot of lots in this area require a lot of fill. Believes they will be in compliance once they are done.

Angelaastro – Asked if they had permission for the 6 to 8 feet of fill.

Hanley – Yes.

Cohen – The HDC application is included in the information he provided for this appeal and it shows a 1 foot grade change.

Botticelli – There was no indication during the HDC approval process that the 1st floor would be at elevation 21.

Silverstein – Reiterated that this is an appeal for his department and Building not reacting within 14 days resulting in a constructive denial. There is no constructive denial of enforcement; the appeal was not filed within the statutory time limit.

Angelaastro – He believes that the vote is on the 14-days. The owner can come back for a variance, and they are on notice.

Cohen – Noted he has appealed on the additional basis of inaccuracies on the building permit application. Upholding the appeal sends a strong message that Zoning is not taking their actions lightly.

Koseatac – Asked if the board could agree with the first finding, disagree with the second, and agree with the third.

Antonietti – Reviewed the three findings that the board would make in regards to a motion.

Silverstein – To argue failures in the building permit, the appeal would have had to have been filed within 30 days; that was not done. He and Mr. Butler did take action as requested by Mr. Cohen though not within 14 days. They did not refuse to suspend or revoke the building permit.

McCarthy – Cited and read the decision of a precedent case in regards to the 30-days appeal period. To deny the appeal supports the decision of the Zoning and Building Departments.

Angelaastro – Made a motion to deny the appeal of Treerock Realty Trust.

Cohen – Asked to withdraw the appeal without prejudice.

Discussion on the motion to accept the withdrawal

Motion
Vote
Motion to Approve the withdrawal of the appeal without prejudice. (made by: McCarthy) (seconded by: Poor)
Carried unanimously

3. 28-15 Marguerite Steed Hoffman 15 Sherburne Turnpike Beaudette
Applicant is seeking relief by Special Permit pursuant to Zoning By-law Section 139-16.C (1) to reduce the side and rear yard setbacks from ten (10) to five (5) feet in order to install air conditioning units to the garage/studio within the 10 foot southerly side yard setback and to renovate an existing step to the main dwelling in the same location inside the 10 foot westerly side yard setback. The Locus is situated at 15 Sherburne Turnpike, is shown on Nantucket Tax Assessor's Map 30 as Parcel 34, and as Lot 10 upon Land Court Plan 9009-E and Lot 14 upon Land Court Plan 9009-G. Evidence of owner's title is registered on Certificate of Title No. 25262 on file at the Nantucket County District of the Land Court. The property is zoned Residential 20 (R-20).

Sitting Toole, Botticelli, McCarthy, O'Mara, Koseatac

Documentation File with associated plans, photos and required documentation, and email from Ceasara Wendin & Ann Cross, 11 Sherburne Turnpike

Representing **Rick Beaudette**, Vaughan, Dale, Hunter and Beaudette, P.C. – The two lots pre-exist zoning. This is to allow the placement of air conditioning (A/C) units within 6.7 feet of the lot line and maintain an existing A/C located within the setback. Two steps that are within the setback on the easterly side will be removed; on the westerly side, steps are 9 feet from lot line in 10-foot setback. Addressed concerns of the abutter about possibly continuing to build within the setbacks.

Public Ceasara Wendin, 11 Sherburne Turnpike

Concerns (2:13) **O'Mara** – Asked how long the compressor that exists has been in place and if the other has been installed.

Beaudette – The existing A/C has been in place since 1997 and is enclosed in a fence. Clarified the installation and proposed location of the additional A/C.

Botticelli – The only place the new A/C could go would be behind the breezeway, the only spot not within 10 feet of the lot line.

Toole – Asked why the new A/C can't be small like the existing A/C.

Beaudette – They might be able to do it. He will check.

O'Mara – The A/C that's been there since 1997 could stay but the new A/C should be in compliance.

Wendin – Reviewed emails of concern sent to the ZBA: noise and mission creep.

Toole – Has concerns about mission creep; noted that the plantings are outside ZBA jurisdiction.

Beaudette – There is a provision in the bylaw to grant the special permit. Stated he has not noted this board ever turning down a request like this.

O'Mara – The A/C will be more efficient next to the house, not the guest house.

Botticelli – Suggested granting the permit to go to 8.1 feet or making them code compliant.

Beaudette – Asked to continue for more clarification

Motion **Motion to Continue to the next regular meeting for more information.** (made by: Botticelli) (seconded by: O'Mara)
Vote Carried unanimously

4. 30-15 Benjamin M. McGrath & Linda B. McGrath and David B. Dillard & Anna-Karin Dillard, as Appellants, and Anjonc Real Estate13 Company, LLP *et al*, as Owners 1 Kite Hill Lane Reade
Appellants bring an appeal of a Zoning Administrator Decision pursuant to Zoning By-law Sections 139-29.C(3) and 139-31 and M.G.L., c. 40A, Section 8. Appellants request that the Zoning Board of Appeals overturn Zoning Administrator Decision File 15-15 granted to Anjonc Real Estate 13 Company, LLP *et al*. Appellants further request a determination that the proposed project to alter a pre-existing nonconforming structure requires a Special Permit and modification to prior relief pursuant to Section 139-33 and M.G.L., c. 40A, Section 6. The subject Locus, an undersized lot of record, is situated at 1 Kite Hill Lane, is shown on Nantucket Tax Assessor's Map 42.4.4 as Parcel 63. Evidence of owner's title is in Book 1484, Page 185 on file at the Nantucket County Registry of Deeds. The property is zoned Residential Old Historic (ROH).

Sitting Toole, Botticelli, McCarthy, O'Mara, Koseatac

Documentation File with associated plans, photos and required documentation and correspondence from abutters

Representing **Arthur Reade**, Reade, Gullicksen, Hanley, & Gifford LLP – This and the next involve the same subject and the two matters should be considered together. His client is asking the ZBA to overturn the Zoning Administrator (ZA) decision in order to consider the impact on the neighborhood. Asked that John Brescher make his case before ruling on this appeal.

Public **John Brescher**, Glidden & Glidden – On the procedural aspect, he agrees with Mr. Reade noting that he will make the same presentation with identical information.

Concerns (2:31) **Toole** – Stated that he feels ready to vote on this appeal.

O'Mara – He would like to hear 31-15 then vote on the two.

For discussion, see 31-15 Concerns

Motion **Motion to Uphold the appeal.** (made by: McCarthy) (seconded by: O'Mara)
Vote Carried unanimously

5. 31-15 Anjonc Real Estate 13 Company, LLP *et al* 1 Kite Hill Lane Brescher
Applicant requests special permit relief pursuant to Zoning By-law Section 139-33.A in order to alter the pre-existing nonconforming dwelling. The structure is sited within the side and rear yard setbacks. The work consists of raising the structure, removing the existing foundation and an access to the crawl space, installing a full basement, lowering the structure back down onto a new poured concrete foundation, and adding three window wells. The Locus, an undersized lot of record, is situated at 1 Kite Hill Lane, is shown on Nantucket Tax Assessor's Map 42.4.4 as Parcel 63. Evidence of owner's title is in Book 1484, Page 185 on file at the Nantucket County Registry of Deeds. The property is zoned Residential Old Historic (ROH).

Sitting Toole, Botticelli, McCarthy, O'Mara, Koseatac

Documentation File with associated plans, photos and required documentation and correspondence from abutters

Representing **John Brescher**, Glidden & Glidden – The existing structure is only 510 square feet (SF); reviewed set backs. The proposal is to lift structure and construct a new foundation with no change in height; the window wells are not deemed to be structures. Willing to agree to conditions on the ZA's decision.

Luke Thornewill, Thornewill Design

Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for McGrath
Carl Jelleme, Toscana Corporation
Linda McGrath, 12 Cliff Road
Frances Karttunen, 67 Centre Street, local historian
Anna-Karin Dillard, 86 Centre Street
David Dillard, 86 Centre Street
Lucy Breed, 11&13 West Chester Street

Concerns (2:31) **O'Mara** – Wants to know how the neighbor's property and the road will be protected during construction.

Brescher – Stated he spoke to Frank Daly, the builder, who stated they would put in steel sheathing to protect the neighboring properties and road.

Silverstein – First of all there is the question regarding the window wells; for the last 20 years or so, window wells have been treated as retaining walls and not an issue with setbacks. Cited the bylaw permitting the ZA to make a decision on a pre-existing, non-conforming structure not impacting the neighborhood or changing the non-conformity.

Reade – This involves a new foundation, which is to be a fully finished cellar with two bedrooms added to a small house on a small lot. The window well on the westerly side is set up to be a walk-out exit providing a secondary means of egress;

as such it isn't entirely a retaining wall. Contends that is the reason this should require a special permit and the new foundation puts it back into non-conformity. The "size" of the house is increasing. The impact on the neighborhood is its proximity to the lot line during construction. Kite Hill Lane is an easement owned by 5 Kite Hill Lane. It is essential that there be no obstruction of the lane at all during construction.

Jelleme – In his opinion, there isn't enough room to drive steel sheathing and build a new foundation with a full basement without intruding upon the neighboring properties. It is too risky, too close, and too tight.

O'Mara – Asked if raising a structure takes it out of non-conformity; this puts it back into non-conformity. It is important that the elevation of the 1st floor be exactly the same after work is complete.

Silverstein – That is more in the case of a demolition, not the replacement of a foundation.

Toole – Asked if there was an effort made to demolish this building and start fresh.

Jelleme – Still couldn't fit the sheathing for construction of the foundation. Underpinning would leave the house in place and tunnel under the porch then excavate under the house within the existing foundation.

McGrath – Read a letter of concerns submitted into the file.

Karttunen – In response to the idea of demolition, this structure is over 100 years old.

Brescher – Stated they are cognizant of the proximity to the neighbors. The idea is to make the work seamless and unobtrusive. Noted that parking for the ROH is one space per bedroom.

AK Dillard – The idea of a commercial enterprise entering into a residential area will change the lifestyle of Kite Hill Lane.

Thornewill – Spoke to the concerns of abutters. What is being proposed is done often with no ill effects on neighboring properties.

D Dillard – Spoke to the impact on the neighborhood.

Breed – Concerned that the window wells are not adequate safety egress. Spoke against the addition of the basement bedrooms.

Botticelli – There is only one door on the building; there appears to be no second means of egress. In the past, window wells have been approved in the setback. The issues of being disconnected from the foundation, density, and the intensity of the project make this a hard problem. Digging 9 feet down 3 feet from the lot line seems very difficult.

Discussion about the second means of egress.

O'Mara – This work can be done properly without damage to the neighbors or roadway; it's done all the time.

Toole – Due to the scope of the project; this should have probably come to the ZBA.

Silverstein – Substantially more detrimental is not a standard for administrative relief. Reviewed the standards for administrative relief, which is discretionary. It is arguable that this is not the ZBA's job to ensure this is done right; that falls on the people doing the work. On the instance of intensity, a single family is a single family regardless of the size of the family. Weekly rentals are not considered a commercial use. This board might want to develop a list of where the Administrator's discretion lies. Asked the board to uphold the ZA's decision.

Botticelli – On the face, this looks very straight forward. In her opinion, the ZA did not overstep her bounds.

Antonietti – Explained her decision process and the information she had access to in regards to this project. Technically this met parameters for an administrative decision to all degrees; admitted she did not take into consideration the environmental impact on the neighboring properties and roadways.

Reade – Believes this calls for an amendment to the zoning bylaw that makes standards for a ZA decision consistent with those for a ZBA decision.

O'Mara – On the zoning aspect, he is not surprised at the abutters' concerns. Perhaps the ZA encroached unknowingly on the ZBA jurisdiction. With proper conditions and involvement of a licensed engineer, this applicant is entitled to do the work.

Koseatac – This is a very tight space. Concerned about the work being done faithfully and safely.

Toole – The owner has a right to do the work. If they are going over 50% renovation work, however, the second means of egress might be required under the Building Code. Noted that the Building Code cannot be circumvented.

Botticelli – There is nothing to preclude putting a basement under this structure. As long as the Building Code and egress requirements are met, this board has no purview over the number of bedrooms.

Motion to Continue to the next regular meeting for additional information on a clear and concise plan of actions. (made by: McCarthy) (seconded by: Koseatac)

Carried unanimously

Motion

Vote

Break 3:45 to 3:51 p.m.

6. 35-15 Ron Kokot 4 Mayhew Road Brescher
- The applicant is requesting a finding that no relief is necessary pursuant to the new definition of Ownership approved at the 2015 Annual Town Meeting. Specifically, applicant seeks to validate that the Locus has been in separate ownership since the lots were first conveyed from the subdivision. Accordingly, the applicant is requesting that the Board make a determination that the lots have not merged by operation of law, because they were continually in separate ownership after the increase in zoning requirements, are documented as separately marketable and buildable upon a Land Court Plan, and have not been in common ownership since applicant acquired title. In the alternative, the applicant is requesting Variance relief pursuant to Zoning By-law Section 139-32 from the provisions of Section 139-33.E. The Locus is situated at 4 Mayhew Road, is shown on Nantucket Tax Assessor's Map 92.4 as Parcel 221, and as Lots 127-134 (inclusive) and 136-140 (inclusive) upon Land Court Plan 5004-D. Evidence of owner's title is registered on Certificate of Title No. 12863 on file at the Nantucket County District of the Land Court. The property is zoned Limited Use General – 3 (LUG-3).
- Sitting Toole, Botticelli, O'Mara, Koseatac, Poor
- Documentation File with associated plans, photos and required documentation
- Representing **John Brescher**, Glidden & Glidden – Reviewed the request. Reviewed the change to definition of ownership made at the 2015 Annual Town Meeting and how it pertains to this property. He is the owner of one lot and trustee of the other lot.
- Public **Angelastro** – Stated it is clear in the zoning bylaw and he sees no need for this to be before the ZBA.
- Concerns (3:52) **Toole** – Under the new definition, this lot is under separate ownership.
Discussion about the intent of the definition and the history of changes in regards to husband and wife having separate ownership and whether or not this needs to be before the ZBA.
Toole – A letter from Town Counsel ruling that this falls under the new bylaw should be sufficient.
- Motion **Motion to Continue to the next regular meeting.** (made by: Botticelli) (seconded by: Koseatac)
- Vote Carried unanimously

(4:03) Discussion among board member about attendance.

7. 32-15 Paul S. Jensen, as Trustee of 23 Sankaty Road Realty Trust 23 Sankaty Road Jensen
- The applicant is requesting a finding that no relief is necessary in order to demolish a pre-existing nonconforming dwelling on an undersized lot created pursuant to M.G.L., c. 41 Section 81L in order to construct a new dwelling which will conform to setback requirements pursuant to Zoning By-law Section 139-16. Accordingly, the applicant is requesting that the Board make a determination that the subject lot will not be merged by operation of law with adjacent undersized nonconforming lots, also owned by applicant, while temporarily vacant. In the alternative, the applicant is requesting relief by Special Permit pursuant to Section 139-33 or, to the extent necessary, by Variance pursuant to Section 139-32 from the provisions of Section 139-33.E in order to maintain the lot as validly buildable after demolition. The Locus is situated at 23 Sankaty Road, is shown as portion of Nantucket Tax Assessor's Map 73.1.4 as Parcel 3, and as Lot 2 in Plan File 2015-10. Evidence of owner's title is in Book 1460, Page 273 on file at the Nantucket County Registry of Deeds. The property is zoned Sconset Residential-10 (SR-1).
- Sitting Toole, O'Mara, Koseatac, Poor, Angelastro
- Documentation File with associated plans, photos and required documentation
- Representing **Paul Jensen** – Reviewed the project that would result in a vacant lot. There is common ownership on this property. He has HDC approval for a new structure that would be compliant.
- Public None
- Concerns (4:05) **Poor** – Would prefer they renovate so that no variance need be issued.
Discussion of ways to proceed and avoid the issuance of a variance.
- Motion **Motion to Continue to the next regular meeting.** (made by: Poor) (seconded by: O'Mara)
- Vote Carried unanimously

8. 33-15 William Cronin and Shawn Feddeman Cronin 22 Willard Street Halsted
- The applicant is requesting a Modification to prior relief in order to alter a pre-existing nonconforming dwelling. Applicant was granted approval in a 1999 Modification to prior relief in order to build an addition with a maximum roof ridge height not to exceed 22 feet 6 inches. Applicant proposes to raise the house and ridge height to the height allowed pursuant to Section 139-17 of the Nantucket Zoning By-law. Locus is nonconforming as to lot area and as to side-yard setbacks. The Locus is situated at 22 Willard Street, is shown on Nantucket Tax Assessor's Map 29 as Parcel 79, and as Lot 2 in Plan Book 19, Page 23. Evidence of owner's title is in Book 1354, Page 203 on file at the Nantucket County Registry of Deeds. The property is zoned Residential-1 (R-1).
- Sitting Toole, O'Mara, Koseatac, Poor, Angelastro
- Documentation File with associated plans, photos and required documentation
- Representing **Patricia Halsted** – Reviewed the request in order to come into conformity with FEMA regulations.
Bill McGuire, Nantucket Architecture Group Ltd
- Public None
- Concerns (4:12) **Poor** – Requested there be a proposed finished floor elevation on the plans for comparison should numbers turn out not to be the same.
Discussion on the motion.
- Motion **Motion to Grant the relief as requested with a proposed finished floor elevation given to the Zoning Administrator as Exhibit A.** (made by: Poor) (seconded by: Koseatac)
- Vote Carried unanimously
9. 37-15 Ralph A. Lee, Jr., and Corinne F. Lee 150 Main Street Halsted
- Applicant is seeking relief by Special Permit pursuant to Zoning By-law Section 139-16.C(2) to validate an unintentional setback intrusion of portions of the dwelling by reducing the side yard setback requirement from 5 feet to 4.7 feet. In the alternative, Applicant requests Variance relief pursuant to Zoning Bylaw Section 139-32 for a waiver from the setback requirements in 139-16.A. The Locus is situated at 150 Main Street, is shown on Nantucket Tax Assessor's Map 41 as Parcel 516, and Plan recorded with Nantucket Deed in Plan Book 15, Page 112. Evidence of owner's title is recorded in Book 238, Page 285 at the Nantucket Registry of Deeds. The property is zoned Residential Old Historic (ROH).
- Sitting Toole, Botticelli, O'Mara, Koseatac, Angelastro
- Documentation File with associated plans, photos and required documentation
- Representing **Patricia Halsted** – Reviewed the request.
- Public None
- Concerns (4:17) Review of the two surveys. No questions.
- Motion **Motion to Grant the relief.** (made by: Angelastro) (seconded by: Koseatac)
- Vote Carried unanimously

IV. OTHER BUSINESS

1. 076-11 Sachems Path, LLC Sachems Path 40B Singer
- Request for determination that changes to the Amended and Restated Comprehensive Permit, required by the Project's Subsidizing Agent, are insubstantial and may therefore be approved as a minor amendments.
- Sitting Toole, Botticelli, O'Mara, Koseatac, Poor
- Documentation File with associated plans, photos and required documentation
- Representing **Kevin Maguire**, Oxbow Partners Project Consultant – Reviewed requested modifications to the permit: 2 deal with the Homeowners Association, 1 deals with who would be responsible for completion and maintenance of infrastructure and at what point in the project.
- Public Correspondence and Amended and Restated Comprehensive Permit for Sachem's Path Nantucket LLC.
- Concerns (4:23) **Toole** – Stated he and Ed Marchant, the ZBA consultant, vetted this: savings would be shared. If the Phase I roads are damaged by construction vehicles working Phase II, that is not the homeowners responsibility.
Maguire – HAC is the trustee until all homes are built. This refers to maintenance of common areas and retention basins. HAC would still be responsible for damage caused by construction.
O'Mara – Shares Mr. Toole's concerns that damage by construction workers would fall on the homeowners.
Maguire – Explained how all damage is documented with photographs.
O'Mara – When the project is complete, there should be photo documentation of the condition of the site; all damage at that point is HAC's responsibility.
Maguire – The sales price of the dwelling calculates into it the Homeowners Association fees.
Antonietti – The board would make a motion to approve, the changes are insubstantial. They withdrew F32 & D8.
- Motion **Motion to Approve.** (made by: Koseatac) (seconded by: Botticelli)
- Vote Carried unanimously

V. NEW BUSINESS CONTINUED

10. 34-15 NHA Properties, Inc., *d/b/a* Housing Nantucket, School View Cottages

7 Surfside Road

Kuszpa

The Applicant is applying for a Comprehensive Permit in accordance with M.G.L. Chapter 40B and pursuant to the Local Initiative Program as approved by the Department of Housing and Community Development. Applicant proposes to relocate and construct two additional dwellings upon the Locus, for a total of four (4) affordable rental units. The Applicant is requesting the Board grant waivers from the Code of the Town of Nantucket as provided in M.G.L. Chapter 40B. The file with a copy of the complete list of requested waivers is available at the Zoning Board of Appeals office at 2 Fairgrounds Road between the hours of 7:30 A.M. and 4:30 P.M., Monday through Friday. The property is permanently deed-restricted for the purpose of providing affordable year-round housing. The Locus is situated at 7 Surfside Road, is shown on Assessor's Map 55 as Parcel 254 and upon Plan Book 13, Page 55. Evidence of owner's title is recorded in Book 1467, Page 6 on file at the Nantucket County Registry of Deeds. The site is zoned Commercial Neighborhood (CN).

Sitting Toole, Botticelli, McCarthy, O'Mara, Koseatac

Documentation Landscaping plan, updated survey, erosion and sediment control plan, grading and drainage plan, utility lay-out plan

Representing **Ann Kuszpa**, Director Housing Nantucket – There are two dwelling permitted on the site; looking to there being four affordable units, according to Nantucket standards. Now she is seeking the permit for the last 2 structures. Reviewed how they have addressed the concerns of the abutters. The smallest unit will be indistinguishable from the other two. The proposal is for 9 parking spaces. Reviewed the plans handed out at the table with the board. Explained how they have control over the tenants and their pets.

Public Sallyanne Austin, 19 Surfside Road

Marian Wilson, 5 Surfside Road

Becky Ryder, 11 Surfside Road

Concerns (4:58) **Toole** – Stated the board would like to see a copy of the lease to be used. The applicant is on board with working with Ed Marchant, the ZBA consultant, and establishment of a reserve fund. Mr. Marchant suggested Housing Nantucket (HN) might want their own consultant to go through the minutia of this application.

Antonietti – Edward Pesce would be the site design and engineering consultant for the Town.

Kuszpa – Mr. Marchant's concern was about their *Pro Forma*. The subsidizing agency has confirmed that HN does not need to adhere to the 10% limited dividend requirement because they are a non-profit.

Discussion about the sources of funding for this project and how those funds are used.

Toole – Mr. Marchant had concern about the 384 square feet (SF) meeting the minimum standard; Ms Kuszpa's original numbers were about 576 SF. Asked if she needs to get a letter from somewhere stating the smaller structure is legal.

Kuszpa – The reason the numbers are different is that she was given the opportunity to place the small dwelling on the site; if that can't be rented for \$2000 a month, as based upon the formula they use, they will have to lower the rent. Explained the formula used to establish the monthly rent for tenants based upon their income.

Austin – Her issue has always been the density and noise, especially not knowing what the other structures will be. It looks pretty on paper but it looks tight on sight. The building that was just moved on from Madaket Road is not the building she thought was being moved on. This is too big a project on too small a lot.

Toole – Asked what the bedroom limitation would be and how many bedrooms could they have if they were building an apartment building.

Kuszpa – This proposal has 7 bedrooms. As for an apartment building, the allowance is one bedroom per 1250 SF; she's not certain but believes they would be allowed 5 or 6 bedrooms if they were constructing an apartment building, per 40B regulations.

Toole – He understood the number to be much higher. Suggested Ms Kuszpa look into that and get the proper number of bedrooms allowable with an apartment building.

Antonietti – Citing the appropriate law, the apartment building could contain a maximum of 8 bedrooms and up to 6 dwellings on a single lot with no commercial or other uses allowed.

Toole – Pointed out that the zoning changed to allow the construction of an apartment building by right.

Botticelli – Noted that this was discussed at previous hearings. This lot could have 8 bedrooms.

Toole – Asked Ms Kuszpa how far along she is in identifying the fourth building.

Kuszpa – She has a proposed building the owner wants moved off this winter, but she can't accept it until she knows she has a permit to move it to this location.

Toole – Would also like to know what the groundcover of the existing and proposed buildings would be.

Discussion about the logistics limiting the moving of buildings over 1 story onto the site and about other lots with multiple structures of similar size.

Wilson – Her main concern is safety; she had to apply for a curb cut on Vesper to relocate her driveway. She has trouble envisioning 4 dwelling with 8 cars and turnaround facilities to preclude backing onto Surfside Road; this is a very busy section of road with the bike path, the school, and the intersection. She asked the board to look closely at the density of the parking and traffic flow.

Toole – Asked Ms Kuszpa to look into if the size of the pet could be restricted. It is a tight site.

Kuszpa – Stated if restricting the size of the pet could be a concession the neighbors would agree upon, HN would be willing to do that.

O'Mara – Asked if a school teacher would fit the financial profile.

Kuszpa – That depends on the size of the household and whether or not there are two "earners." A salary of \$50,000 yearly would fit the profile. Because there is only one affordable unit, the State says HN can adopt a local preference. Working with the State to come up with a Ready-to-rent list rather than a lottery; this list would work as first come/first served. Also working on not having to advertise the affordable unit off island.

Ryder – Her concern is about dogs. The tenant before had two noisy dogs that were left outside all day. Everything echoes. She has asked Ms Kuszpa for a fence that would reduce noise. When work on 7 Surfside began, steel sheets were put in; a tree expert told her that probably cut the roots of the trees on her property that screen the two properties. The house that has been relocated in the corner, she heard the foundation was supposed to be 24" lower than it is; house is now high off the ground. She thinks they ran into a clay base; when the plates went in, her house shook.

Kuszpa – Stated that the excavator ran into a problem that precluded digging the foundation as deep as planned. The structure does have a full basement.

Toole – He appreciates the information provided by Ms Ryder; this board is going to try to make this the best project possible. Stated he has never been to the site and he would like to check it out and do more extensive reading. Pointed out that a fourth building might or might not happen on this property.

Antonietti – Noted that some of the plans submitted were the result of a coordinated review of Town departments: the Department of Public Works, Wannacomet Water, the Building Department, the Zoning Enforcement Officer, the applicant, herself, the Town Engineer, the Planning Board Deputy Director, etc. This is to flesh out safety considerations, maximizing affordability, and attractiveness. There has never been a 40B like this before in scope or nature. Stated she will forward any new plans to the abutters if they email her.

Toole – This is a unique project; all others come in with the full plan.

Botticelli – This is a good concept creating a cluster of small houses; however, the density and scale of structures is a concern.

Toole – Another issue with a 40B is they could have come in with a 5-story structure; there is almost no restriction as to what they can submit. He understands the concerns of safety, noise, pets, and density.

Kuszpa – There are four trees on the property, three are protected. Stated that her view none of the trees will be cut down. Asked when she should submit a revised *Pro Forma*.

Toole – That no trees are cut down can be written into the comprehensive permit.

Kuszpa – In response to a question on reducing the scale of the project, stated she doesn't know the groundcover off hand but she can reduce is as long as it is within 40%.

Botticelli – Aspects that still have to be maintained include: parking, green space, and separation between units.

Kuszpa – The project fits all those guidelines but she doesn't want to give up another unit.

Antonietti – HN has been approved for four units by DHCD.

Kuszpa – Yes, one of the units will be 80% AMI and the other three below 100% AMI, and there would be no more than 7 bedrooms.

Discussion about zoning and other regulations this project has to meet and location of gas, trash, etc.

Toole – Ms Kuszpa is going to talk to Kevin Maguire; Mr. Marchant is on board and we will have him tele-conference in on the meetings as this project gets further along. He will want to see any regulatory language. We need to see the *Pro Forma* revisions and a sample lease. We talked about a reserve fund to be included in the *Pro Forma*. If they meet zoning, parking is fine. Would like to see the screening plan: fence and trees.

Motion
Vote

Continued
N/A

VI. ADJOURNMENT

Motion to Adjourn: 5:51 p.m.

Submitted by:
Terry L. Norton